

REMARKS

Claims 2, 4, 12, 14, 22, and 24 were cancelled in the previous response. Claims 1, 3, 5-11, 13, 15-21, 23, and 25-30 are now pending in the present application. Applicants respectfully request reconsideration of the present application in view of the reasons that follow.

I. Withdrawal of Finality of Rejection

In the previous response, Applicants amended Claims 1, 11, and 21 to include the limitations of now canceled claims 2, 12, and 22. No other amendments, whatsoever, were made to the claims. This Office Action was made final. MPEP 706.7(a), with emphasis added, states:

Under present practice, second or any subsequent actions on the merits shall be final, **except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement** filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Here, the Examiner has entered a new ground of rejection based on U.S. Patent No. 4,621,404. The Examiner states, on page 6 of the Office Action dated 11/2/2006, that "Applicant's amendment necessitated the new ground(s) of rejection". Contrary to the Examiner's statement, this new ground of rejection was not necessitated by Applicants' amendment because **Applicants did not change the scope of the claims in any way** by including the limitations of now canceled claims 2, 12, and 22 in Claims 1, 11, and 21. Further, this new ground of rejection is not necessitated by information submitted in an IDS because no such IDS was entered with the previous response. Accordingly, Applicants respectfully request withdrawal of the finality of the rejection.

II. Rejection of Claims 1, 11, and 21 under 35 U.S.C. § 103(a)

On page 2 of the Office Action, claims 1, 11, and 21 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S. Patent No. 4,619,364 (Czopor) in view of U.S. Patent No. 4,621,404 (Browning). Applicants respectfully traverse this rejection.

Claim 1 recites:

a cover formed of the single sheet of thin, flexible, thermoformed plastic material, the cover comprising

...;

a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge;

Claim 11 recites:

a cover formed of the single sheet of thin, flexible, thermoformed plastic material, the cover comprising

...;

a reinforcement rib extending from the front cover wall to the back cover wall;

Claim 21 recites:

a cover formed of the single sheet of thin, flexible, thermoformed plastic material, the cover comprising

...;

a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling, the second edge opposed to the first edge;

On pages 2-3 of the Office Action dated 11/2/2006, the Examiner states:

With respect to claims 1, 11, and 21, Czopor discloses all of the limitations of the claims ... except for a reinforcement rib However, Browning discloses ... having a reinforcement rib (50) Therefore, it would have been obvious to one having ordinary skill in the art ... to modify the ceiling of Czopor to include a reinforcement rib across opposed first and second edges, as taught by Browning, for providing better structural integrity and additional support against impact forces that may damage the connects of the holder.

Applicants respectfully disagree. MPEP § 2143 states:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

First, there is no suggestion or motivation to combine Czopor with Browning either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, there is not a reasonable expectation of success in combining Czopor with Browning.

Motivation to Combine

There is no motivation to combine Czopor with Browning because Czopor and Browning are not directed to analogous art. Czopor describes "a one-piece, integrally thermoformed case ... in which a

series of tool-receiving recesses is defined.” (Czopor, Abstract). More specifically, Czopor describes a “display package for drill bits”. (Czopor, Title). In direct contrast, Browning describes “a strong, light-weight, rigid molded, plastic luggage provided with wheels and a retractable handle.” (Browning, Abstract). Browning further states:

The process for making the luggage, due to the unique structural design of its elements and the materials from which they are made, comprises unique, yet simple, **molding and manufacturing steps** which allow for facile **assembly of a wide variety of luggage parts** to form the completed product.

(Browning, Abstract, emphasis added). Thus, Browning is not directed to the formation of thermoformed containers. Instead, Browning is directed to hard plastic containers suitable for use as luggage that are assembled as part of a molding and manufacturing process.

An obviousness rejection cannot be properly maintained where there is no suggestion or motivation “either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings” as required by MPEP § 2143. The formation of reinforcement ribs in a cover formed of a single sheet of thin, flexible, thermoformed plastic material is not described in Browning. The formation of containers using a single sheet of thin, flexible, thermoformed plastic material is an active research area due to the unique requirements associated with forming such containers. As a result, Applicants respectfully request withdrawal of the rejection of claims 1, 11, and 21.

Reasonable Expectation of Success

There is not a reasonable expectation of success in combining Czopor with Browning. On pages 2-3 of the Office Action dated 11/2/2006, the Examiner states that “it would have been obvious to one having ordinary skill in the art ... to modify the ceiling of Czopor to include a reinforcement rib ..., as taught by Browning”. Applicants respectfully disagree. On page 6 of the Office Action mailed May 16, 2006, the Examiner made of record, but did not rely on U.S. Patent Publication No. 2001/0006153 (Merrell et al.). Merrell et al. states “that a plurality of rounded ribs 30 extend out from upper and lower molded-sheet portions 12 and 14 of the package, and more specifically from domes 24 and 26.” (Paragraph [0040]). Merrell et al. also states that “the package is a unitary, one-piece article, which is integrally formed by vacuum molding a plastic sheet.” (Paragraph [0029], emphasis added through underlining). Merrell et al. also further states “that the optimum arrangement of these protrusions must be determined empirically on a case-by-case, trial-and-error basis.” (Paragraph [0046]). Merrell et al. fails to disclose, suggest, or teach reinforcement ribs in a cover formed of a single sheet of thin, flexible,

thermoformed plastic material and further indicates that the arrangement of such ribs "must be determined empirically on a case-by-case, trial-and-error basis."

Browning is not directed to the formation of thermoformed containers. Instead, Browning is directed to hard plastic containers suitable for use as luggage. Thus, there is no reasonable expectation of success in combining Czopor, which is directed to thermoformed containers, with Browning to provide reinforcement ribs in a cover formed of a single sheet of thin, flexible, thermoformed plastic material.

An obviousness rejection cannot be properly maintained where there is no reasonable expectation of success in combining the references. The formation of reinforcement ribs in a cover formed of a single sheet of thin, flexible, thermoformed plastic material is not described in Browning. The formation of containers using a single sheet of thin, flexible, thermoformed plastic material is an active research area due to the unique requirements associated with forming such containers. As a result, Applicants respectfully request withdrawal of the rejection of claims 1, 11, and 21.

Applicants respectfully traverse any arguments posed by the Examiner relative to claims 3, 5-10, 13, 15-20, 23, and 25-30 which depend from claims 1, 11, and 21, respectively, as claims 3, 5-10, 13, 15-20, 23, and 25-30 are allowable for at least the reasons outlined above relative to claims 1, 11, and 21. Therefore, Applicants respectfully request withdrawal of the rejection of claims 1, 3, 5-11, 13, 15-21, 23, and 25-30.

III. Rejection of Claims 3, 5, 6, 13, 15, 16, 23, 25, and 26 under 35 U.S.C. § 103(a)

On page 3 of the Office Action, claims 3, 5, 6, 13, 15, 16, 23, 25, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Czopor in view of Browning and further in view of U.S. Patent No. 5,012,928 (Proffitt et al.). Applicants respectfully traverse this rejection because the Examiner has failed to present a *prima facie* case of obviousness. At a minimum, the Examiner has failed to demonstrate that Czopor, Browning, and Proffitt et al., can be correctly combined to disclose, teach, or suggest all of the claim limitations as recited in claims 3, 5, 6, 13, 15, 16, 23, 25, and 26.

As discussed in Section II. above, Czopor and Browning fail to teach at least the limitation "a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling" formed in "a cover formed of the single sheet of thin, flexible, thermoformed plastic material" as required by claims 1, 11, and 21. Proffitt et al. also fails to teach at least the limitation "a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling" as required by claims 1, 11, and 21. As a result, neither Proffitt et al., Czopor, nor Browning can be correctly combined to disclose, suggest, or teach all of the limitations of claims 1, 11, and 21. An obviousness rejection cannot be properly maintained where

the references used in the rejection cannot be combined to disclose all of the recited claim elements.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 3, 5, 6, 13, 15, 16, 23, 25, and 26 which depend from claims 1, 11, and 21.

IV. Rejection of Claims 7-10, 17-20, and 27-30 under 35 U.S.C. § 103(a)

On page 3 of the Office Action, claims 7-10, 17-20, and 27-30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Czopor in view of Browning and Proffitt et al. and further in view of U.S. Patent No. 4,674,628 (Prinsloo et al.). Applicants respectfully traverse this rejection because the Examiner has failed to present a *prima facie* case of obviousness. At a minimum, the Examiner has failed to demonstrate that Czopor, Browning, Proffitt et al., and Prinsloo et al. can be correctly combined to disclose, teach, or suggest all of the claim limitations as recited in claims 7-10, 17-20, and 27-30.

As discussed in Sections II. and III. above, Czopor, Browning, and Proffitt et al. fail to teach at least the limitation “a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling” formed in “a cover formed of the single sheet of thin, flexible, thermoformed plastic material” as required by claims 1, 11, and 21. Prinsloo et al. also fails to teach at least the limitation “a reinforcement rib extending from a first edge of the ceiling to a second edge of the ceiling” as required by claims 1, 11, and 21. As a result, neither Prinsloo et al., Proffitt et al., Czopor, nor Browning can be correctly combined to disclose, suggest, or teach all of the limitations of claims 1, 11, and 21. An obviousness rejection cannot be properly maintained where the references used in the rejection cannot be combined to disclose all of the recited claim elements. Therefore, Applicants respectfully request withdrawal of the rejection of claims 7-10, 17-20, and 27-30 which depend from claims 1, 11, and 21.

Additionally, on page 4 of the Office Action, with emphasis added, the Examiner repeats the following statement from the Office Action dated 5/16/2006:

With respect to claims 8, 9, 18, 19, 28 and 29, while Czopor as modified does not disclose that the common distance is at a midpoint of the length or offset from the midpoint by one-quarter of the length, it would have been an obvious matter of design choice ..., since Applicant has not disclosed that by doing so solves any state problem or is for any particular purpose and it appears that the invention would perform equally well (gripping the contents) with the staggered protrusion arrangement

With respect to claims 10, 20 and 30, while Czopor as modified does not disclose that the first and second receptacle walls have integral third and fourth protrusions at a distance offset from the midpoint by one-quarter of the length, it would have been obvious to one of ordinary skill in the art ... to include additional protrusions within the receptacle ...,

since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Applicants again respectfully disagree. The protrusions assist in "holding name badges." Czopor discloses a package for a set of twist drill bits. (Czopor, Abstract). Contrary to the twist drill bits of the Czopor package, the name badges are held upright and should generally be held straight and level. Staggered protrusions may bend the name badges as known to those skilled in the art. The drill bits held by the Czopor package are not easily bent nor are they held upright. Thus, Applicants did disclose a particular purpose for the invention, and the invention would not perform equally well with the single protrusion of Czopor.

On page 5 of the Office Action, with emphasis added, the Examiner states:

a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Here, Czopor clearly teaches the claimed structural limitations,

However, the prior art apparatus does not satisfy the claimed structural limitations of claims 8-10, 18-20, and 28-30 as clearly admitted by the Examiner in the bolded and underlined quotation above from page 4 of the Office Action. The Examiner is stating that it would have been obvious to provide the claimed structural limitations. In response to our arguments, the Examiner incorrectly states that "Czopor clearly teaches the claimed structural limitations".

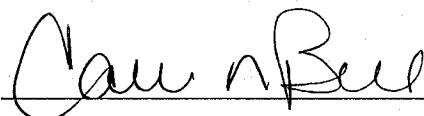
Applicants have identified reasons why the limitations of claims 8-10, 18-20, and 28-30 are not obvious, and the Examiner admits that the limitations are not disclosed in Czopor. Therefore, Applicants respectfully request withdrawal of the rejection of claims 8-10, 18-20, and 28-30.

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Atty. Dkt. No. 074112-0126

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-2350. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-2350. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-2350.

Respectfully submitted,

By 

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FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4263
Facsimile: (608) 258-4258

Callie M. Bell
Attorney for Applicants
Registration No. 54,989